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FILED
JUN 16 1944
CHARLES ELMORE CROPLEY
CLERK

In the
Supreme Court of the United States

TERM, 1944

No. 170

STATE OF IOWA,

Respondent,

vs.

GLENN CLARK and JAMES PONTRALO,

Petitioner.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

GORDON A. NICHOLSON,
Attorney for Petitioner.

FRANK L. BURBRIDGE,
CARL V. BURBRIDGE,
ROY E. HAVENS,
Of Counsel.

COCKLE PRINTING CO., LAW BRIEFS, OMAHA

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PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

Your petitioner, James Pontralo, defendant and appellant in the Supreme Court of Iowa, respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Petitioner appealed from an order of the District Court of Pottawattamie County, Iowa from a cause in which bail bond in the sum of $2,500.00, interest and cost, was ordered forfeited against petitioner, Pontralo, because of his inability to produce, on a charge of larceny, Glenn Clark, principal in a criminal case in which the State of Iowa was prosecuting said Glenn Clark. Clark had been released on bail bond on September 23, 1942 to answer the charge of larceny of a motor vehicle, the bond being signed by him as principal and petitioner, James Pontralo, as surety. Thereafter on November 10, 1942, Glenn Clark appeared in Court and was arraigned on such charge, entered a plea of not guilty and was advised that the case would be assigned for trial as soon after November 21, 1942 as it could be reached. The case was reached for trial on December 1, 1942 but Clark was not present and did not appear because of the inability of petitioner, Pontralo, to produce him for the reason that he was confined in a Nebraska jail and thereafter transported to the State Penitentiary at Lincoln, Nebraska under a penitentiary sentence. The Nebraska authorities refused to permit him to attend the Iowa Court to stand trial on the charge for which petitioner had signed his bond although petitioner had tried by every possible means to produce him in Court. After the bond was declared forfeited, an appeal was taken to the Supreme Court of the State of Iowa on the ground, generally, that the Iowa Criminal case should have been continued until such time as petitioner could produce Clark at the time

he should be released by the Nebraska authorities when his sentence in Nebraska would be completed.

The Iowa Supreme Court denied the appeal and affirmed the judgment of the lower court of forfeiture of the bond against petitioner. (See opinion of the Court R. .....)

Jurisdiction of This Court

The jurisdictional statute upon which your petitioner relies to nivoke the jurisdiction of this court is Section 237 of the Judicial Code of the United States.

Your petitioner claims that his rights under the Federal Constitution, hereinafter quoted, and the decisions of this Court have been denied and such decisions nullified as hereinafter more specifically stated.

B.

Reasons Relied on for Allowance of the Writ

1. The Supreme Court of Iowa was in error in holding that petitioner was liable on a bond to produce Glenn Clark for the reason that it was physically impossible to obtain his presence because of the restraint imposed by the Nebraska authorities. Its decision and opinion plainly ignore the fact that the principal on a bond being incarcerated in a penitentiary of another state, the keeper thereof plainly refusing to surrender him, no responsibility rests upon the surety to do more than demand in every possible way the prisoner's production. He must indeed, of course, follow the case and secure the presence of such prisoner immediately upon his legal release from the institution in which he may be incarcerated.

2. The Supreme Court of Iowa is clearly in error in requiring a forfeiture because under such circumstances, unless by force or some species of kidnapping wherein the petitioner would himself have been guilty of the commission of a crime, it was totally impossible for him to produce Glenn Clark. That in so doing the Iowa Supreme Court ignored the decisions of this and other Federal Courts which in effect state that where it is impossible to secure a principal's presence by reason of a condition which may amount practically to an act of God, forfeiture is defeated. In other words, when it is physically impossible to obtain the prisoner as in this case, a forfeiture *should not be* entered against the surety.

184 P. 372, 7 A. L. R. 392, 67 Colo. 452.

3 R. C. L. 55, 6 C. J. 946, 1053.

37 N. W. 586.

11 S. Ct. 140 U. S. 435, 35 L. Ed. 458.

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48 F. (2nd) 465, 48 F. (2nd) 574.

42 F. (2nd) 399, 27 F. 633.

59 Fed. 565.

3. That the error and the evil of the State Court in thus unreasonably and arbitrarily approving the decision of the lower court forfeiting the bond has patently deprived the petitioner of property without due process of law.

WHEREFORE your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court directed to the Supreme Court of the State of Iowa, commanding that Court to certify and to send to

this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case, numbered and entitled on its docket, No. 46344, State of Iowa, Appellee, vs. Glenn Clark and James Pontralo, Appellants, and that the judgment of the Supreme Court of Iowa may be reversed by this Honorable Court and it be ordered that petitioner be given time to the expiration of the Nebraska sentence of Clark to deliver him to trial before the District Court of Iowa and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just, and your petitioner will ever pray.

JAMES PONTRALO,

By GORDON A. NICHOLSON,

Attorney for Petitioner.

FRANK L. BURBRIDGE,
CARL V. BURBRIDGE,
ROY E. HAVENS,

of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Iowa Supreme Court in its decision did violence to the 5th and 14th Amendments to the Constitution of the United States wherein it is stated that no person shall be deprived of life, liberty or property without due process of law. Had the Iowa District Court entered an order that Pontralo, your petitioner, deliver Clark for trial immediately upon his release from the custody of the Nebraska authorities and upon such contingency, petitioner had failed to produce him then due process would have been had and complaint could not logically be made. It is conceded that if a reasonable time is granted (See *Turner vs. New York,* 18 S. Ct. 38, 168 U. S. 94, 42 L. Ed. 392; *Saravac vs. Comptroller,* 1900, 20 S. Court 642, 177 U. S. 318, 44 L. Ed. 786) no complaint could be made.

But it is not reasonable to require production of a defendant in a criminal case when it is manifest that the bondsman has tried to produce his presence and been unable to do so because of the restraint imposed by the penal authorities of another state.

The Iowa Court in its decision also went clearly contrary to the United States Constitution (14th Amendment) in not alone depriving petitioner of property without due process of law but denying the equal protection of the laws to petitioner considering that both petitioner and the Iowa Supreme Court were powerless to enter or cause to be entered any order or in any manner control the Nebraska Courts or prison officers. That in thus ignoring petitioner's rights, the Court's decision was unreasonably taken and shockingly violative of petitioner's rights under the Constitution.

1. In a proceeding for judgment on forfeiture of bail bond for non-appearance for trial both the principal and surety are by statute afforded right to show cause why forfeiture should be set aside and judgment instanter denied.

Sections 13631, 13632 and 13636, Code of 1939.

2. Circumstances shown in excuse of a defendant's non-appearance may be sufficient to require a setting aside of the forfeiture of his bail bond and a denial of judgment.

State v. Thomason, 226 Iowa 1057, 285 N. W. 636.

State v. Arioso, 207 Iowa 1109, 224 N. W. 56.

6 Am. Jur., 101, Sec. 137.

Annotation, 7 A. L. R. 392.

Annotation, 8 A. L. R. 363.

Annotation, 84 A. L. R. 444.

3. The purpose of the criminal law is to secure punishment of criminals and not to have the State profit financially by the collection of a judgment or a forfeiture of bail bond.

Bruntlett v. Carroll County, 193 Iowa 875, 188 N. W. 142.

State v. Sandy, 138 Iowa 580.

State v. Thomason, 226 Iowa 1057, 285 N. W. 636.

4. While the arrest and detention of a defendant in another state preventing appearance for trial in this state does not operate to discharge his bail, such excuse for failure to appear for trial, accompanied by showing of effort by surety to produce defendant for trial, that defendant is not attempting to evade trial, that he can be

delivered for trial after release from foreign custody, and request for continuance order and other order of court fully protecting the rights of all parties affords sufficient cause for setting aside forfeiture and postponing judgment a reasonable time.

3 R. C. L. 53, Sec. 64.

6 Am. Jur. 103, Sec. 140.

State v. Thomason, 226 Iowa 1057, 285 N. W. 636.

State v. Arioso, 207 Iowa 1109, 224 N. W. 56.

6 Am. Jur. 119, Sec. 185.

6 Am. Jur. 120, Sec. 189.

5. Where the discretion exercised by the court was a legal one, and only questions of law are involved the decision of the trial court will be reversed on appeal if not based on sufficient grounds.

Swan v. City of Indianola, 142 Iowa 731.

Hart v. Stence, 219 Iowa 55, 97 A. L. R. 535.

Bennett v. Ryan, 206 Iowa 1236.

SUMMARY

I.

The arbitrary decision of the State Supreme Court in affirming the judgment of the lower court forfeiting the bond against Petition is in direct conflict with applicable decisions of the Federal Court and the principle of law that the surety on a bond cannot do the impossible or override constituted authority in obtaining a principal's presence.

II.

That the Iowa Supreme Court totally ignored the petitioner's rights under the Constitution of the United States in thus entering a decision which amounted to deprivation of property without due process of law.

III.

That the Iowa court by charging a forfeiture when petitioner found it physically and legally impossible to bring the principal into court when held by the authorities of another state, invaded petitioner's rights under the Constitution which in effect states that no state shall enforce a law which abridges the privileges of a citizen of the United States or deprive him of property without due process of law or deny him equal protection of the laws when it would patently appear that no authority existed either in the Iowa court or petitioner to control the action of the Nebraska courts or prison officials.

Article 14, Constitution of the United States.

CONCLUSION

Your petitioner has tried to keep within the rules which govern applications for Writ of Certiorari by limiting this brief in all possible respects. A hearing upon the merits will, of course, disclose more fully the evil of the State Court's judgment. We submit, however, that we have shown that the petitioner's constitutional rights have been violated and that the State Court's judgment is in direct conflict with the Constitution of the United States and decisions of the Federal Courts and the gen-

eral rule of law in similar questions and that no opportunity was given him to perform his obligation under the bond at the time when the restraint imposed with apparent legality by the State of Nebraska would end. That while the amount of the judgment obtained in this case is not of great magnitude compared to sums involved in many cases heard by this Court, it is a matter of concern to your petitioner that his rights be protected under the State and Federal law. We therefore earnestly pray the Court to grant the writ that these rights may be protected.

Respectfully submitted,

JAMES PONTRALO,
By GORDON A. NICHOLSON,
Attorney for Petitioner.

FRANK L. BURBRIDGE,
CARL V. BURBRIDGE,
ROY E. HAVENS,
Of Counsel.